

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM,

Docket No. 12-CV-2858(VB)

Plaintiff,

-against-

**AFFIDAVIT IN OPPOSITION
TO PLAINTIFF'S MOTION
FOR LEAVE TO AMEND
AND SUPPLEMENT**

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM;
BLUMA TENNENBAUM; DAVID RUBENSTEIN;
KIRYAS JOEL COMM AMBULANCE CRP; DISTRICT
FAMILY COURT OF ORANGE COUNTY 9TH JUDICIAL
DISTRICT; HON. ANDREW B. BIVONA; ATTY.
MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY
OF ORANGE COUNTY; ATTY. KIM PAVLOVIC;
ATTY JOHN FRANCIS X. BURKE; CHILD
PROTECTIVE SERVICES OF ORANGE COUNTY;
CHRISTINE BRUNET; ATTY STEPHANIE BAZILEOR;
JOHN DOES 1 THROUGH 95; JANE DOES 1-20;

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

Patrick T. Burke, being duly sworn, deposes and says:

1. I am a member of the firm of Burke, Miele & Golden, LLP, attorneys for defendant John F. X. Burke, Esq., who is among the attorneys sued by Jacob Teitelbaum in this case. I make this affidavit in order to oppose the plaintiff's application for leave to amend his complaint.

2. Relevant Procedural History

On February 11, 2013, the Court issued a Memorandum Decision which granted several of the defendants' motions to dismiss. (Doc. #138).

On February 25, 2013, John Burke moved to dismiss the plaintiff's complaint against him. (Doc. #'s 147, 148 & 149).

On February 28, 2013, the Court issued an Order which provided, among other things, that the plaintiff shall file his response to Burke's motion to dismiss and any motion for leave to amend his complaint as to Burke by April 8, 2013. The Court also ordered that "No extension of these deadlines will be granted." (Doc. # 156, paras. 5 & 6).

April 8, 2013 passed without any response from plaintiff.

On April 17, 2013, the Court issued a Memorandum Decision which stated that a "failure to comply with the various deadlines set forth in the Court's order dated February 28, 2013 . . . may result in his case being dismissed for failure to prosecute pursuant to Fed.R.Civ.P.41(b)." (Doc. #168).

On April 29, 2013, the plaintiff filed a Motion for Leave to Amend and Supplement together with a Second Amended Complaint. (Doc. #172).

No response was ever submitted by the plaintiff to John Burke's Motion to Dismiss.

The plaintiff's current claims.

3. In the main, the plaintiff's substantive allegations in his proposed "Modified Second Amended Complaint" ("MSAC") are the same as those found in his first amended complaint which the Court addressed in its February 11, 2013 Memorandum Decision. The plaintiff correctly states that, on February 20, 2013, the Court denied his motion for a default judgment against John Burke. (MSAC, para. 347). He fails, however, to note that the Court permitted John Burke to move to dismiss the plaintiff's complaint and that the Court set a briefing schedule, with which John Burke has complied but which he has not. He does acknowledge that, in response to his February 27th request for clarification, the Court, on February 28th ruled that it would not extend the deadlines it had structured on February 20th. (MSAC, para. 355, 357, 359).

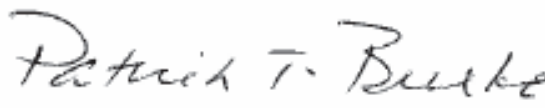
4. In our February 25, 2013 motion papers we said:

The Court's Memorandum Decision of February 11, 2013, at 10-11, found that the plaintiff's claims against the other defendant attorneys in this matter could not be reached under the *Rooker-Feldman* doctrine. The same rationale which the Court applied to dismiss the claims the plaintiff made against the other defendant attorneys applies to the claims he makes against John Burke. The plaintiff's federal claim against John Burke should be dismissed and this Court, we urge, should decline to exercise supplemental jurisdiction over the plaintiff's remaining state law claims pursuant to 28 U.S.C. §1367(c)(3).


5. There is nothing in plaintiff's MSAC which would have any effect upon the Court's original analysis of the plaintiff's complaint or upon our arguments directed toward it which we submitted on February 25, 2013.

6. We reiterate our request that the Court dismiss the plaintiff's variously styled complaints against John Burke ("First Amended Complaint", "Modified Second Amended Complaint") for the reasons set forth in our February 25, 2013 motion papers and for the additional reason that the plaintiff has never complied with this Court's February 28, 2013 briefing schedule.

Respectfully submitted,


Patrick T. Burke (7471)

Sworn to before me this
22nd day of May, 2013.


Notary Public

VICTORIA CALLIANO
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4864718
QUALIFIED IN ROCKLAND COUNTY
COMMISSION EXPIRES AUGUST 14, 2013

TO: Jacob Teitelbaum, pro se
5 Leipnik Way, #102
Monroe, New York 10950
and c/o Ben Friedman
5 Leipnik Way
Monroe, New York 10950

Garbarini & Scher, P.C.
Attn: Gregg D. Weinstock, Esq.
Attorneys for Defendant Maria A. Patrizio, Esq.
s/h/a Maria Petrizio
432 Park Avenue South, 9th Fl.
New York, New York 10016-8013
212-689-1113 – phone
email: gweinstock@garbarini-scher.com

David Darwin, Esq.
Orange County Department of Law
Municipal Law Division
15 Matthews Street, Suite 305
Goshen, New York 10924
845-291-3150 - phone
845-291-3167 – fax
email: ddarwin@orangecountygov.com

Taddeo & Shahn, LLP
Attn: Karen M. Taddeo, Esq.
Attorney for Defendant
Kiryas Joel Comm Ambulance CRP
473 South Salina Street, Suite 700
Syracuse, New York 13202
315-422-6666
email: ktaddeo@ts-law.com

Tarshis, Catania, Liberth, Mahon & Milligram, PLLC
Attn: Rebecca Mantello, Esq.
Attorneys for Defendant
Children's Rights Society of Orange County
One Corwin Court
P. O. Box 1479
Newburgh, New York 12550
845-565-1100
email: rmantello@tclmm.com